

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for August 3, 2005 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #05035

PROPOSAL: A request for a special permit to expand a nonconforming use to increase the area where the sale of alcoholic beverages for consumption on the premises is allowed for Arnold's Tavern.

CONCLUSION: The nonconforming condition is caused by the lack of the required number of dedicated off-street parking spaces. However, adequate on-street and joint-use off-street parking is provided throughout the Havelock business district to accommodate the parking demand generated by this use, and the impact of the proposed expansion is not significant.

<u>RECOMMENDATION:</u>	Conditional Approval
-------------------------------	----------------------

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached ownership certificate.

LOCATION: 6113 Havelock Avenue

EXISTING ZONING: B-3 Commercial

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North:	Commercial	B-3
South:	Parking Lot	B-3
East:	Commercial	B-3
West:	Commercial	B-3

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses for this property.

BACKGROUND: The subject premises has been at this same location since 1922. This request seeks to expand the licensed premises to include an outdoor beer garden. The beer garden, approximately 23' x 22' (506 square feet) is surrounded by a fence and is attached to the south end of the building adjacent to the alley. Establishments which sell alcohol and

pre-date the adoption of the 1979 Zoning Ordinance are considered pre-existing special permits if the use complies with the requirements for a special permit. Those that don't are treated as nonconforming uses. In this case, the required number of dedicated off-street parking spaces is not provided, and the use is considered nonconforming. As a result, a special permit as required under LMC Section 27.63.280 Expansion of Nonconforming Uses must be approved by the Planning Commission for the beer garden to be allowed.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS FOR EXPANSION OF NONCONFORMING USES PER LMC 27.63.280.

(a) Effects on adjacent property, traffic, city utility service needs.

The proposed expansion consists of a 23' x 22' outdoor beer garden attached to the south end of the building. Located at the rear of the building, the beer garden opens onto an alley bounded by a parking lot on the south.

The block is fully developed with commercial uses with the exception of three single-family residences at the southwest corner. The entire block is zoned B-3 including the homes. The nearest residential zoning district is R-6 approximately 180' to the west.

The Health Department notes that the premises is subject to the Noise Control Ordinance, and the applicable noise standard is based upon the zoning of the affected property. In this case, the residential noise standard would apply due to the R-6 zoning to the west. The Health Department recommends that the applicant become familiar with the standard, and that no sound amplification equipment be allowed in the beer garden.

A paved alley extends east-west through the block. It provides access to the rear of the buildings facing Havelock Avenue and to parking spaces and a parking lot located off the alley. The beer garden opens onto the alley and provides access to patrons parking to the rear of the building. The beer garden does not interfere with vehicles using the alley, nor does it remove any existing parking spaces.

(b) Density of land use zoning for the subject property and adjacent property.

This site is zoned B-3, and off-street parking must be provided at the ratio of 1 space per 600 square feet of floor area. Based upon floor area, five parking spaces are required - including the beer garden, one additional space is required, bringing the total to six.

The lot is wide enough to accommodate two parking stalls off the alley. Other parking spaces are available south of the alley in a 36-stall, privately-owned parking lot designated for joint use by merchants in the area. The applicant's customers can park here, but the applicant does not have exclusive use of any of the spaces. Additionally, there are on-street parking spaces located along Havelock Avenue, and North 61st and 62nd Streets. The peak parking demand for this use is during the off-peak hours for the neighboring retail uses, so the proposed expansion should not significantly impact the amount of parking available to them.

(c) The degree of hardship upon the applicant which would be caused by failure to grant such a permit.

Arnold's Tavern can continue to operate regardless of whether this application is approved or not. Additionally, denial of this request does not prohibit the construction and use of the outdoor seating area for smoking or dining, but only prohibits the sale or consumption of alcoholic beverages. The applicant states that this request is in response to the indoor smoking ban, and is an attempt to provide an outdoor area where people can smoke and be served alcohol.

3. DEPARTMENT RESPONSES:

POLICE: The Police Department had no objection to this request.

PUBLIC WORKS: Public Works had no objection to this request.

HEALTH: As an advisory note, the Health Department recommends that if smoking is allowed in the outdoor patio area, that at least 20% of the area of the total square footage of the walls and ceiling be open to ensure adequate ventilation.

CONDITIONS:

Site Specific:

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan provided that no sound amplification equipment shall be allowed in the beer garden.

General:

2. Before receiving building permits:

- 2.1 The construction plans comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP, 441-6362, bwill@lincoln.ne.gov
Planner
June 15, 2005

OWNER: S.R.S dba Arnold's Tavern
6113 Havelock Avenue
Lincoln, NE 68507
402.466.9486

APPLICANT/:
CONTACT: Steven Stutzman
4650 Shirl Court
Lincoln, NE 68516
402.483.1317



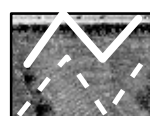
2005 aerial

Special Permit #05035 N. 61st & Havelock Ave

Zoning:

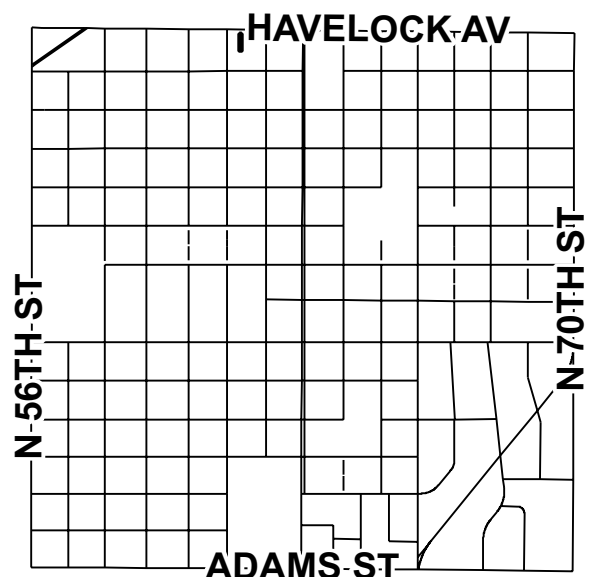
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 9 T10N R7E



Zoning Jurisdiction Lines

City Limit Jurisdiction



N

Havelock Ave

Exit

25'

Existing
Bldg.

105'

LOT 9
BLOCK 32
HAVELOCK

Exit

23'

Beer
garden

22'

167.5'

Exit

Parking

Alley

Alley

RECEIVED

JUL - 6 2005

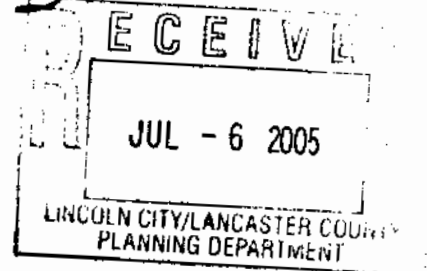
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

To Whom it may concern,

This building has been a bar since 1922. I have owned Arnolds since 1980. This beer garden has been built not only to serve beer but also to have a place for my customers to smoke so as not to have them standing on the sidewalk in front of the bar smoking.

Arnold's is a neighborhood bar and I think ^{this} addition will be well received. I do not think parking will be a problem as we have public parking to the south of us and we are the only business open on the block in the evening.

Steven A. Sturmer
President SRS Inc.



CERTIFICATE OF OWNERSHIP

TO WHOM IT MAY CONCERN:

FILE NO: C13530

The undersigned, hereby certifies the following real property title data to be true and correct as taken from the records of LANCASTER County, Nebraska regarding title to the following described real estate:

Lot 9, Block 32, Havelock, Lincoln, Lancaster County, Nebraska.

MOST RECENT CONVEYANCE:

Grantee: SRS, Inc.

Inst. No.: 90-31305

Date of Instrument: October 11, 1990

Date Filed: October 11, 1990

This certificate is a contract between the abstractor and the person requesting the certificate. This certificate does provide a report of the information available in the public record of the County in which the subject real estate is located on the date shown below. This certificate does not pass on the marketability of title, nor as to the legality or sufficiency of any instrument or proceeding in the chain of title to said real estate. This certificate is not an opinion of title or a guaranty of title. The liability of the producer of this document is limited to fee charged for it.

EFFECTIVE DATE: June 29, 2005 AT 8:00 A.M.

UNION TITLE COMPANY

BY: Marlene A. Oetters
REGISTERED ABSTRACTER
CERTIFICATE OF AUTHORITY NO. 581

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Brian Will	DATE: July 19, 2005
DEPARTMENT: Planning	FROM: Chris Schroeder
ATTENTION:	DEPARTMENT: Health
CARBONS TO: EH File EH Administration	SUBJECT: Arnold's Tavern SP #05035

The Lincoln-Lancaster County Health Department has reviewed the special permit application with the following noted:

- The LLCHD notes that residential zoning is located approximately 180 feet from the proposed beer garden. The LLCHD strongly advises the applicant to become familiar with the City of Lincoln's Municipal Code (LMC) 8.24 - Noise Control Ordinance.
- LMC 8.24 Noise Control Ordinance does address noise pollution by regulating source sound levels based upon the receiving land-use category or zoning. LMC 8.24 provides that for residential zones, noise based upon a ten minute LEQ must not exceed 65 dB(A) from 7:00 am to 10:00 pm and 55 dB(A) from 10:00 pm to 7:00 am. Therefore, the LLCHD advises that no sound amplification equipment be allowed in the proposed beer garden.
- Regarding outdoor smoking areas, the LLCHD recommends at least 20 percent open space relative to the total square footage of all four walls and ceiling area to provide adequate ventilation for the protection of public health.